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10/620,742

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Joseph L. Sullivan

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EXAMINER

REIDEL, JESSICA L

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

06/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/620,742

Applicant(s)

SULLIVAN ET AL.

Examiner

JESSICA REIDEL

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 7 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 7 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Acknowledgment is made of Applicant's Amendment, which was received by the Office on February 18, 2008. Claims 1-3, 5, 6, 8-41 and 43-82 are cancelled. Claims 4, 7 and 42 are pending.

Claim Objections

2. In view of the response filed February 18, 2008, the claim objections made in the Office Action of August 17, 2007 have been withdrawn.

Claim Rejections - 35 USC § 112

3. In view of the response filed February 18, 2008, the 35 U.S.C. 112, second paragraph rejections applied against Claim 42 in the Office Action of August 17, 2007 has been withdrawn.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention.

5. ***Claims 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.*** Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting an essential step, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is: selecting a part of the displayed human body. It is to the Examiner's best understanding that a user of Applicant's invention (a first aid system) must select a part of a displayed human body through use of an input device of the system before a microprocessor of the system can receive such a selection (see, for example, page 8, paragraph 48 and pages 15-18 of Applicant's originally filed disclosure). Claim 7 depends from Claim 4 and the deficiencies of Claim 4 are imputed to all dependant claims.

Allowable Subject Matter

6. The indicated allowability of Claim 4 is withdrawn in view of the 35 U.S.C. 101 rejections applied below in this Office Action. In addition, the indicated allowability of Claims 4, 7 and 42 is withdrawn in view of different interpretations and/or reconsiderations of the previously applied University of Medicine and Dentistry of New Jersey (WO 96/19774) reference. Rejections based on these interpretation(s) and/or reconsiderations follow.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. ***Claim 4 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.*** A claimed method must 1) be tied to another statutory class of invention (such as a particular apparatus) or 2) transform underlying subject matter to a different state of thing. See MPEP § 2106.IV.B. The recited steps of “receiving a selection of a part of the displayed human body” and “presenting first aid information as a function of the selection” do not include limitations tying the steps to another statutory class of invention, nor do the recited steps include any limitations requiring that the “receiving” or “selecting” transform underlying subject matter to a different state or thing. Similarly, the recited step of “summoning emergency medical personnel” does not include limitations tying the step to another statutory class of invention, nor do the recited steps include any limitations requiring that the “receiving” or “selecting” transform underlying subject matter to a different state or thing. A person (such as a paramedic) may “receive” a selection of a part of a displayed human body by simply viewing a display of a diagram representing at least a portion of a human body and selecting or choosing a part of the displayed human body using his/her mind.

A person may “summon” emergency medical personal (such as another paramedic) by simply motioning to such personal with his/her hand. To overcome this rejection, the Examiner recommends changing Claim 4 such that the method is one of using a first aid system where the recited “displaying” is accomplished through use of an output device of the system and such that the recited “receiving” is accomplished through use of an input device of the system (see, for example, Figs. 4 and 5, page 7, paragraph 44, page 8, paragraph 48 and pages 15-16, paragraphs 80-86 of Applicant’s originally filed disclosure). Similarly, Claim 4 should be amended such that the recited “summoning” is accomplished through use of an input device of a first aid system or such that the “summoning” is executed via a microprocessor and a communication module of a first aid system (see, for example, Fig. 7 and page 17, paragraphs 89-91 of the originally filed disclosure).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. ***Claims 4 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by University of Medicine and Dentistry of New Jersey (WO 96/19774) (herein UMDNJ).*** UMDNJ discloses a method of and system for interaction between a user and an electronic database via a computer driven graphical interface that may be implemented with physiological monitoring systems known in the art. UMDNJ also discloses that the method and system may be used to direct an individual who is not skilled in acute trauma or intensive care management for effectively treating a trauma patient at a location far from a hospital setting (see UMDNJ page 3, lines 1-22; page 30, line 22 through page 31, line 4;). In particular, the system is applicable for the diagnosis, treatment and management of trauma or surgical patients and the user may be a medical professional or a para-professional (e.g., a paramedic).

The system includes a computer readable medium comprising instructions/software for causing a programmable processor to display a diagram representing at least a portion of a human body (see UMDNJ Figs. 1-8 and pages 7-8). UMDNJ expressly discloses that a user may select a part of such a displayed diagram using an interface device (e.g., a mouse or touch sensitive screen) such that a processor of the system receives the selection and presents therapeutic advisories or suggestions, read as first aid information to the user as a function of the selection. The first aid information may include identification of critical resuscitative maneuvers and/or emergency procedures that may be required to treat any acute problems which may arise in post trauma victims. UMDNJ specifies that in an emergency or urgent situation, such information guides a user having limited experience (such as a paramedic) to immediately initiate an appropriate therapy before experienced trauma/surgical/medical consultation and management becomes available to the trauma patient (see, for example, UMDNJ page 9, lines 4-25; page 15, line 7 through page 17, line 6; page 18, line 1 through page 19, line 5; page 20, lines

8-18; page 25, line 19 through page 26, line 5;). UMDNJ also specifies that the instructions/software further cause the programmable processor of the system to generate cautions or warnings, read as alarms as a function of the selection, in addition to generating the therapeutic advisories or suggestions (see UMDNJ page 15, lines 12-29; page 18, lines 22-27; page 28, line 5 through page 31, line 4;).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. ***Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over UMDNJ in view of Snyder et al. (U.S. 6,356,785).*** As previously discussed, UMDNJ discloses that a user of the system may be an individual who is not skilled in acute trauma or intensive care management for effectively treating a trauma patient at a location far from a hospital setting. UMDNJ also discloses that interpretation of the patient's physiologic severity (e.g., whether the patient is in shock or in cardiac arrest) and its consequences, as well as the patient's disposition "following a resuscitation", may be specified by a user of the system such that the therapeutic advisories or suggestions and/or cautions or warnings may be generated on a continual or iterative basis (see UMDNJ page 3, lines 1-22; page 7, line 6 through page 8, line 2; page 12, lines 1-18, page 15, line 7 through page 16, line 3; page 18, line 22 through page 19, line 5; page 30, line 22 through page 31, line 4;). UMDNJ discloses the claimed invention except that it is not specified that the

"resuscitation" include an electrotherapy (e.g., a defibrillation therapy). The Examiner, however, considers it to be conventional and well known in the art that "resuscitation" of a patient experiencing cardiac arrest often includes the administration of cardiopulmonary resuscitation (CPR) and/or the delivery of defibrillation shock therapy. The Examiner cites Snyder as being just one example. Snyder expressly discloses that quick response to a cardiac arrest is critically important and further specifies the American Heart Association "Chain of Survival" guidelines conventionally known in the art. The "Chain of Survival" guidelines include: 1) Early access to an emergency medical service ("EMS"), such as by activating an emergency response system (e.g. calling an ambulance or calling "911"); 2) Early CPR initiated by a bystander or other early caregiver to help the patient survive until more advanced care arrives; 3) Early defibrillation; and 4) Early application of Advanced Cardiac Life Support ("ACLS"), such as airway management, drugs, etc. (see, for example, Snyder columns 1-2). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the "resuscitation" disclosed by UMDNJ includes delivering of a defibrillation therapy since it was known in the art to include early defibrillation therapy in the treatment of trauma patients experiencing cardiac arrest in order to increase such a patient's chance of survival.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Morgan et al. (U.S. 4,610,254) (herein Morgan '254) disclose an interactive external defibrillator. Morgan et al. (U.S. 5,593,426) (herein Morgan '426) disclose a defibrillation system comprising a defibrillation communicator and a communication network for transferring information to and from an external defibrillator.

Freeman (U.S. 6,201,992) discloses a defibrillator comprising an audio/video output unit configured to receive inputs relating to user inputs, patient signals and device signals and to provide video instructions, and optionally audio or textual instructions, relating to operation of the defibrillation based on such inputs.

Hutchins (U.S. 5,913,685) discloses a CPR aiding computer system for providing guidance to rescue personnel trained in CPR for resuscitating a victim under an emergency condition. The system receives input representative at least of characteristics of the victim

relevant to proper performance of CPR techniques and generates output responsive to the input, the output representative of proper steps to be taken in resuscitating the victim.

Sinay (U.S. 4,290,114) discloses a computer-aided health care system for use by a paramedic in treating a victim under an emergency condition. The system receives input representative at least of characteristics of the victim and generates output responsive to the input, the output including a diagnosis for the victim and specific instructions for its treatment.

Dormond et al. (U.S. 4,839,822) disclose a computer system and method for suggesting treatments for a physical trauma patient. The method comprises displaying a diagram representing at least a portion of a human body, receiving a selection of a part of the displayed human body and presenting suggested treatments for the patient as a function of the selection.

15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JESSICA REIDEL whose telephone number is (571)272-2129. The Examiner can normally be reached on Monday - Friday, 8:00 AM - 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Carl H. Layno can be reached on (571)272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jessica L. Reidel/
Patent Examiner, Art Unit 3766
June 4, 2008

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June 05, 2008